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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 In re COUNTRYWIDE FINANCIAL
19 CORP. MORTGAGE-BACKED
20 SECURITIES LITIGATION CASES

21 THRIVENT FINANCIAL FOR
22 LUTHERANS, et al.,

23 Plaintiffs,

24 v.

25 COUNTRYWIDE FINANCIAL
26 CORPORATION, et al.,

27 Defendants.

Case No. 11-ML-2265-MRP
(MANx)

**THRIVENT'S RESPONSE TO
DEFENDANTS' MOTIONS TO
DISMISS THE AMENDED
COMPLAINT**

Judge: Hon. Mariana R. Pfaelzer
Courtroom: 12

Case No. 11-CV-7154-MRP (MANx)

1 Thrivent Financial for Lutherans, Thrivent Life Insurance Company,
 2 Thrivent Mutual Funds, Thrivent Variable Annuity Portfolio Funds, Thrivent
 3 Defined Benefits Plan Trust and Thrivent Financial for Lutherans Foundation
 4 (collectively, “Thrivent”) respectfully submit this memorandum in opposition to
 5 the motions to dismiss filed by: (i) Defendants Countrywide Financial Corporation,
 6 Countrywide Home Loans, Inc., Countrywide Home Loans Servicing, LP,
 7 Countrywide Securities Corporation, Countrywide Capital Markets, LLC,
 8 CWALT, Inc., CWMBS, Inc., CWABS, Inc. and CWHEQ, Inc. (the “Countrywide
 9 Defendants”) [ECF No. 175]; (ii) Bank of America Corp., BAC Home Loans
 10 Servicing, L.P. and NB Holdings Corp. (the “Bank of America Defendants”) [ECF
 11 No. 181]; (iii) Angelo Mozilo (“Mozilo”) [ECF No. 177]; and (iv) David A.
 12 Sambol, (“Sambol”) [ECF No. 179] (collectively, “Defendants”).

13 **I. INTRODUCTION**

14 By Order dated February 17, 2012, this Court denied Defendants’ motions to
 15 dismiss Thrivent’s claims for fraud, fraudulent inducement and reckless
 16 misrepresentation. ECF No. 170 (“February 17 Order”). The Court also dismissed
 17 without prejudice claims relating to transfer of title, negligent misrepresentation,
 18 aiding and abetting and successor liability and granted Thrivent leave to amend.
 19 On March 9, 2012, Thrivent filed an Amended Complaint. ECF No. 172. On
 20 March 30, 2012, Defendants filed motions to dismiss. Defendants do not challenge
 21 the fraud, fraudulent inducement or reckless misrepresentation claims this Court
 22 previously sustained. Rather, Defendants repeat arguments challenging the claims
 23 relating to transfer of title, negligent misrepresentation and aiding and abetting. As
 24 explained in the Amended Complaint, Thrivent did not amend these allegations
 25 and included them solely to preserve appellate rights. Amended Complaint at n.1.

26 **II. THRIVENT’S RESPONSE TO DEFENDANTS’ MOTIONS**

27 Thrivent hereby incorporates all of its arguments set forth in its opposition to
 28 Defendants’ initial motions to dismiss. ECF No. 157. Thrivent reserves all

1 appellate rights with respect to these claims, including the right to argue that the
 2 February 17 Order was decided incorrectly. *Forsyth v. Humana, Inc.*, 114 F.3d
 3 1467, 1474 (9th Cir. 1997).

4 The Amended Complaint adds new allegations supporting Thrivent's claims
 5 for successor liability, actual fraudulent transfer and constructive fraudulent
 6 transfer against the Bank of America Defendants. The amended factual allegations
 7 supporting these claims are materially identical to those asserted in *Allstate Ins.*
 8 *Co, et al. v. Countrywide Fin. Corp., et al.*, No. 2:11-cv-5236-MRP (MANx), 2012
 9 WL 335730 (C.D. Cal. Feb. 2, 2012) ("*Allstate II*"). After full briefing and oral
 10 argument, this Court dismissed the successor liability claims in *Allstate II* with
 11 prejudice. Rather than waste the Court's and the parties' resources re-litigating
 12 issues this Court previously considered and decided, Thrivent hereby incorporates
 13 plaintiffs' arguments in *Allstate II* and preserves all such arguments for appeal,
 14 including the right to argue that *Allstate II* was decided incorrectly for any reason.
 15 Plaintiffs do not oppose entry of the Bank of America Defendants' proposed Order.

16 **III. CONCLUSION**

17 For the foregoing reasons, Thrivent hereby incorporates its arguments in
 18 opposition to Defendants' previous motions to dismiss, as well as the arguments in
 19 *Allstate II*, in opposition to Defendants' motions to dismiss [ECF Nos. 175, 177,
 20 179, 181] for the purposes of preserving appellate rights. *See Forsyth*, 114 F.3d at
 21 1474.

22 Dated: April 23, 2012

Respectfully submitted,

23 /s/ Timothy A. DeLange
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